

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: § CASE NO. 23-90147-7  
5 MOUNTAIN EXPRESS OIL COMPANY, § JOINTLY ADMINISTERED  
ET AL, § HOUSTON, TEXAS  
6 § THURSDAY,  
§ AUGUST 24, 2023  
DEBTORS. § 4:15 P.M. TO 05:37 P.M.

7 **STATUS CONFERENCE (VIA ZOOM)**

8 BEFORE THE HONORABLE DAVID R. JONES  
9 UNITED STATES BANKRUPTCY JUDGE

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12 APPEARANCES: SEE NEXT PAGE

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14 **(Recorded via CourtSpeak)**

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23   Also present:

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24

25   (Please also see Electronic Appearances.)

1       **HOUSTON, TEXAS; THURSDAY, AUGUST 24, 2023; 4:15 P.M.**

2           (Recording begins abruptly.)

3           THE COURT: -- Central. Today is August the  
4 24th, 2023. This is the Docket for Houston, Texas. On the  
5 4:15 Docket, we have the jointly administered cases under  
6 Case No. 23-90147, Mountain Express Oil Company.

7           Folks, please don't forget to record your  
8 electronic appearance. And, again, even if you made it this  
9 morning, I ask that you do it again this afternoon. We will  
10 have created a different list. It is the way we note your  
11 official appearance.

12           We do have folks both here in the courtroom as  
13 well as on GoToMeeting. For those folks in the courtroom,  
14 if you do rise to speak, if you would, please make sure you  
15 come to the lectern so that everyone can both hear you and  
16 see you. If you are on GoToMeeting, I have activated the  
17 hand-raising feature.

18           If you know you're going to be speaking, if you'd  
19 go ahead and give me a five star, so I can get you unmuted.  
20 You can, of course, change your mind at any time.

21           Whether you are in the courtroom or on  
22 GoToMeeting, the first time that you speak, if you would,  
23 please state your name and who you represent. It really is  
24 a good point of reference for the court reporters in the  
25 event that a transcript request is made.

1           Finally, we are recording this afternoon using  
2 CourtSpeak. We'll have that recording up on the Docket  
3 shortly after the conclusion of the hearing.

4           I think, like, 92 people hit five star. I will  
5 get to all of you in just a moment. It just doesn't work  
6 that fast.

7           (Pause in the proceedings.)

8           THE COURT: All right, Mr. Wolfshohl, why don't  
9 you go ahead and tell me where we are while I'm still  
10 clicking through these.

11           MR. WOLFSHOHL: Thank you, Your Honor, Joshua  
12 Wolfshohl and Megan Young-John for the Trustee. And  
13 Ms. Northrup is in the courtroom as well, Your Honor.

14           THE COURT: Good afternoon to everybody.

15           MS. YOUNG-JOHN: Good afternoon, Your Honor.

16           MR. WOLFSHOHL: Your Honor, we did circulate a  
17 draft order to a lot of people.

18           THE COURT: Sure.

19           MR. WOLFSHOHL: I -- we actually collectively got  
20 our notes together to try to make sure that we were  
21 including everybody that had asked for notice and people  
22 that had emails -- emailed us for notice. I hope we got  
23 everybody that we talked about at the last hearing.

24           We sent an order around. We got a lot of  
25 comments back. A lot of the comments were focused on the

1 concept of what happens with the termination and the  
2 rejection. And so we attempted to accommodate those with  
3 language that tried to synthesize what we thought that --  
4 the main comments we were getting, but we, in no way,  
5 incorporated everybody's exact comments. It just wasn't  
6 possible in the time that we had.

7 THE COURT: I got that. And they are going to be  
8 other -- this is not -- this is not in place of the ability  
9 to seek relief based upon your particular circumstances.  
10 It's just to try and deal with as many general issues as we  
11 could. So I appreciate the effort.

12 I haven't -- I just now see that 1396 exists.  
13 I'm going to hear from everybody, and I am going to take a  
14 couple of minutes and read it.

15 MR. WOLFSHOHL: No problem, Your Honor. We also  
16 sent a Word version to Mr. Alonzo just so you know, Your  
17 Honor.

18 THE COURT: Got it. I just -- I haven't been  
19 down --

20 MR. WOLFSHOHL: Understood.

21 THE COURT: -- so got it. Okay.

22 MR. WOLFSHOHL: And not everybody -- I mean, I'm  
23 not sure everybody has really even seen how we attempted to  
24 incorporate their comments just because of the time  
25 constraints, and we needed to get over here. So --

1 THE COURT: Sure. They can read it while I'm  
2 reading it --

3 MR. WOLFSHOHL: Okay.

4 THE COURT: -- if they haven't already done so.  
5 All right. So you think you've got an order that's  
6 incorporated as many comments as you could, but it  
7 accomplishes my instructions to you from (indiscernible)?

8 MR. WOLFSHOHL: I believe so.

9 THE COURT: Okay. All right. Let me -- with the  
10 understanding that I've not yet read the order -- so don't  
11 go, well, I think paragraph 12 ought to be modified to say  
12 the following because I don't know what paragraph 12 says at  
13 this point.

14 Conceptually, anyone have an issue that they need  
15 to address?

16 MR. ELROD: Your Honor, this is John Elrod on  
17 behalf of the DIP agent.

18 THE COURT: Sure.

19 MR. ELROD: If I could raise one issue that's  
20 late breaking.

21 THE COURT: Okay.

22 MR. ELROD: Your Honor, I believe that a number  
23 of interested parties heard Your Honor's statement at the  
24 12:15 hearing loud and clear. And, therefore, there was a  
25 -- there were a number of interested parties in a subset of



1 the Debtors' fuel supply agreements. These are those that  
2 relate to, what I understand, are generally referred to as  
3 the non-controlled sites and the fuel supply agreements  
4 associated with those.

5 THE COURT: Uh-huh.

6 MR. ELROD: Your Honor, you may recall at the  
7 hearing on Monday morning, there was an individual in the  
8 courtroom by the name of Shaneel Lalani. He is the  
9 principal of an entity known as Lalani Petroleum. Lalani  
10 Petroleum has agreed, in principle, to assume and assign  
11 those contracts for material consideration to the estates.  
12 And I can read the terms. I believe Mr. Phillips, who  
13 represents Mr. Lalani, may be on the line.

14 THE COURT: Yeah. And Mr. Elrod, all due  
15 respect, too late. I gave you the time -- I gave you the  
16 time without any sort of constraints whatsoever. I told you  
17 what I was going to do today. I'm a man of my word. I'm  
18 going to do exactly what I said I was going to do.

19 I also question sort of some of the comments  
20 about that he was shut out of the process and that he never  
21 had ample opportunity to participate. Simply not true.  
22 It's too late. We're done.

23 MR. ELROD: Understood, Your Honor.

24 THE COURT: All right.

25 Anyone else?

1 Ms. Surinak?

2 MS. WILLIAMSON: Your Honor, Deborah Williamson.

3 THE COURT: Ms. Williamson, Ms. Surinak was  
4 first. I'll be -- I'll circle back around.

5 MS. SURINAK: Good afternoon, Your Honor. Can  
6 you hear me?

7 THE COURT: Yes, ma'am. Thank you for checking.

8 MS. SURINAK: Thank you. Ashley Surinak on  
9 behalf of Blue Owl and its affiliated entities.

10 Your Honor, we circulated one comment that did  
11 not make it into the proposed form of order that we believe  
12 certain other landlords are also supportive of, which is  
13 just the fact that -- understanding that you haven't read  
14 the order and that there's going to be certain inventory and  
15 lender collateral on the sites upon rejection of the real  
16 property leases.

17 Our proposal is to just build in a concept that  
18 basically allows landlords to liquidate those estate  
19 proceeds and whether or not the proceeds then -- you know,  
20 net of costs in terms of their reasonable necessary costs  
21 incurred with liquidating that inventory in the interest of  
22 efficiency and allowing the landlords to get back into the  
23 sites and begin operating, as opposed to waiting for, you  
24 know, someone to come in at some point to assess what's  
25 actually left of the properties.

1 I think we just want to build in some mechanism  
2 that would allow the landlords to do so. And whether or not  
3 -- I know Mr. Kuebel had raised, you know, maybe the  
4 proceeds to go into a trust account that's controlled by the  
5 Chapter 11 Trustee, as opposed to directly to the DIP  
6 lender. We're not opposed to, you know, any construct. We  
7 just think there should be a mechanism built in so that  
8 landlords aren't, you know, regaining control of the  
9 properties upon rejection and termination of the leases.

10 But then they have, you know, certain foods, fuel  
11 in the ground, other inventory that they could be  
12 liquidating in the interest of efficiency and actually  
13 taking control back of the site versus, you know, a delayed  
14 process in terms of the lenders having someone come out to  
15 assess everything and go from there.

16 THE COURT: So let me ask this, Mr. Wolfshohl.  
17 It would seem to me that given the amount of, number one,  
18 the outstanding DIP as well as the prepetition, it would  
19 just seem to me that all of this property -- and I think I  
20 can do it pursuant to Rule 70. I'll just transfer all of  
21 that property to the DIP lender, and then that becomes a  
22 conversation that the Trustee's not involved in. That's a  
23 conversation in the example between Mr. Elrod and  
24 Ms. Surinak.

25 I see no reason for the Trustee to be involved in

1 that, unless you tell me that there's a lien issue or  
2 perfection issue, which I can't imagine there is with  
3 respect to the DIP, but I'm happy to hear it.

4 MR. WOLFSHOHL: No, Your Honor, we're not raising  
5 any kind of issue like that. And the less involved we are  
6 in that process, for us, the better. So --

7 THE COURT: I mean, Ms. Surinak, wouldn't you  
8 rather just negotiate with Mr. Elrod and work that out  
9 between the two of you than to have to have a three-party  
10 conversation?

11 MS. SURINAK: Yes, Your Honor. And we've had  
12 conversations with Mr. Elrod, and we just think there should  
13 be some kind of concept built into the order --

14 THE COURT: No. I --

15 MS. SURINAK: -- that permits for it.

16 THE COURT: -- I can do this in two sentences.

17 MS. SURINAK: Of course.

18 Mr. Elrod?

19 MR. ELROD: Yes, Your Honor.

20 THE COURT: Any issue from just letting you --  
21 again, I said this many times: I mean, we're to the point I  
22 want all the parties to be able to control their own  
23 destiny. Why shouldn't -- why shouldn't you -- why  
24 shouldn't you just take that, and then you can -- if you  
25 want stuff thrown away, you can say, nope, throw it away.

1 If you want to say, nope, you can have it all, you can do  
2 that by location.

3 If you want to enter into an agreement that you  
4 do some sort of -- I'm making this up -- some sort of  
5 proceeds-sharing arrangement with somebody who's selling it  
6 for you, you're free to do it. You don't have to come get  
7 my approval. You don't have to negotiate with a Trustee.  
8 You just make your own decisions.

9 MR. ELROD: Your Honor, I think the -- we have no  
10 issue with the concept. There may be some formalities that  
11 we'd like to make sure are observed. As a regulated  
12 financial institution, I'm not sure that we want to take  
13 title to these assets.

14 THE COURT: I don't think you do either.

15 MR. ELROD: So, you know, maybe that we could set  
16 up a special purpose vehicle to take title to them. But,  
17 you know, this is -- I understand Your Honor's thoughts on  
18 it. We don't necessarily need to involve the Chapter 7  
19 Trustee or the Chapter 11 Trustee in that process and would  
20 just ask that we have a period of time to think through that  
21 process.

22 THE COURT: So let me ask -- and, Mr. Elrod, I  
23 want to be practical. The moment this order gets entered,  
24 and certainly no later than tomorrow, you're going to have  
25 an issue. And so I -- how practically do you think we can

1 deal with this?

2 MR. ELROD: Your Honor, what I would suggest is,  
3 if you could give us, yeah, I guess, yeah, 24 hours to get  
4 this just structured, I think that would give us time to  
5 work through the issue.

6 THE COURT: Ms. Surinak?

7 MS. SURINAK: We're amenable to giving them time.

8 THE COURT: All right.

9 Mr. McFaul, you've been hitting -- you've raised  
10 your hand 13 times. Sorry. I didn't mean to ignore you.

11 MR. MCFAUL: Well, I just -- before the Court  
12 ruled on something, I would like to be heard on this point.  
13 Thank you, Your Honor.

14 THE COURT: Sure.

15 MR. MCFAUL: Duston McFaul for Pilot Flying J and  
16 Hunt Refining Company.

17 I was glad to see the form of the order did not  
18 include the revisions by Oak Street, and we have a serious  
19 issue with them because at -- with the Flying J dealer  
20 locations, Your Honor, Pilot Flying J keeps title to the  
21 diesel at the pumps and remits rent to MEX. So it's  
22 actually its property, and the revisions had it such that  
23 anything in any location is defined as a state property. I  
24 think it's dangerous to be defining a state property and  
25 allowing Oak Street to just liquidate it and also allow them

1 to decrease any turnover with damages, costs.

2 And, you know, the problem here is there's not a  
3 one size fits all.

4 THE COURT: Right.

5 MR. MCFAUL: I mean, we're not all just pure  
6 suppliers. So we object in that Conversion Order to cutting  
7 out the Chapter 7 Trustee this early and not doing, you  
8 know, lines in the tanks, determining the inventory, not  
9 having some control over the liquidation. We certainly  
10 object to Oak Street liquidating our property, which was  
11 defined as estate property because it was on their location.

12 So Oak Street owns the property. MEX operated at  
13 least 22 of these sites where we owned the actual product.  
14 So I'm -- you know, just would plead, Your Honor, that we  
15 don't push all this in without thought into a Conversion  
16 Order.

17 THE COURT: So, Mr. McFaul, tell me again what it  
18 is you don't want me to do because I'm not sure I fully  
19 understood.

20 MR. MCFAUL: Yes. I don't want you to sign an  
21 order that allows Oak Street to sell Flying J Pilot product  
22 or its -- or its point of sale equipment or a number of  
23 things that it continues to own by virtue of the  
24 relationship and the contracts here with MEX.

25 THE COURT: So I don't think I ever contemplated

1 letting anybody sell anything that didn't belong to the  
2 Chapter 7 estate. What I was really focused on was  
3 Mr. Elrod's client has a lien on certain things. And, you  
4 know, if he's able -- if he's able to pull a rabbit out of  
5 his hat with meaningful value out of all of this net of  
6 costs, then I think that he's a miracle worker, but I want  
7 to give him the ability to make his own decisions about that  
8 without the administrative overhead of the Chapter 7 Trustee  
9 since I'm not aware of a way that there could ever be any  
10 incremental value to the estate above Mr. Elrod's -- both  
11 his DIP liens, as well as his prepetition liens. That's all  
12 I was focused on. I wasn't suggesting --

13 MR. MCCALL: Yes.

14 THE COURT: -- that we were going to go conduct  
15 an auction of everything. It was just to -- if you had --  
16 if Mr. Elrod had collateral, I think that he ought to be  
17 able to deal directly with the disposition of that  
18 collateral and not have to work through the Trustee. That  
19 was -- that was all I was -- that's all I was focused on.

20 If you own something, then you own it. I --  
21 somebody else can't sell what you own if you own it  
22 outright --

23 MR. MCFAUL: And it's --

24 THE COURT: -- and undisputed.

25 MR. MCFAUL: -- and it's unfair for Your Honor to



1 be having this conversation because you didn't see the  
2 insert because it didn't make it into the --

3 THE COURT: Ah.

4 MR. MCCALL: -- final form, the proposed order.  
5 But the way property of the estate was defined and the way  
6 the rights of Oak Street were defined, it would have allowed  
7 exactly that. So that's the context I think you're missing.

8 THE COURT: I get it. Okay. No. Thank you.

9 MR. MCCALL: And apologies doing this in a vacuum  
10 where you didn't see the language.

11 THE COURT: No. All good. I'm learning as we  
12 go, and I appreciate your patience.

13 Let me -- a number of folks have raised their  
14 hand; plus one gentleman came to the lectern. Let me do  
15 Ms. Williamson next. I promised her.

16 UNIDENTIFIED SPEAKER: Yes, Your Honor.

17 THE COURT: Ms. Williamson?

18 MS. WILLIAMSON: Yes, Your Honor.

19 Deborah Williamson with -- representing Valero Marketing and  
20 Supply Company.

21 Your Honor, my statement's just fairly general.  
22 The proposed order that was submitted only makes reference  
23 to fuel supply agreements. The relationship between, I  
24 think, the fuel suppliers and Mountain Express is broader  
25 than that and often reflected in multiple agreements, many

1 of which are controlled.

2 As I said before, the PNPA, like the branding;  
3 the, you know, the signage. And so I -- we would just  
4 recommend that and just saying all agreements for the supply  
5 of fuel, just all agreements of fuel suppliers are  
6 terminated. That way we don't have to pick and figure out  
7 which one do we have to go back to. I think that was the  
8 intent.

9 THE COURT: Mr. Wolfshohl?

10 MR. WOLFSHOHL: I have no issue with that.

11 THE COURT: No. Understood.

12 MR. WOLFSHOHL: I have -- I have no issue with  
13 that, Your Honor.

14 THE COURT: All right, Ms. Williamson, thank you  
15 for the input. Let me -- so I don't forget. So what you're  
16 saying is in paragraph 3?

17 MS. WILLIAMSON: Yes, Your Honor.

18 THE COURT: But would --

19 MS. WILLIAMSON: Where it says, "All agreements  
20 for the" -- well, it says, "for the supply of fuel." I  
21 would say "all agreements of fuel suppliers, including but  
22 not limited to supply of fuel are rejected." And we have a  
23 footnote insert with the list of the fuel suppliers we've  
24 provided.

25 THE COURT: So all agreements with fuel. All

1 right. Got it. When I -- when I get around to the end of  
2 this, I'll come back, and I'll put -- I'll put the order up  
3 on the screen, and we'll work through that. Okay?

4 MS. WILLIAMSON: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. EISENBERG: Your Honor, in that same  
7 paragraph -- and I apologize. I know I'm stepping in front  
8 of somebody. Philip Eisenberg, on behalf of the Brothers.

9 We have a license agreement. It's also a  
10 branding agreement. So they're running the brand, the  
11 stations, and now that they're shutting down, we'd like that  
12 license agreement included in the litany of agreements  
13 that's rejected.

14 MR. WOLFSHOHL: I don't have an issue with that,  
15 Your Honor, either. I -- not to use it as an excuse, but  
16 there was a fire drill at my office as we were trying to  
17 prepare this order, and I walked over to Ms. Northrup's  
18 office in order to try to prepare it and avoid the fire  
19 drill which was going to delay me about 30 minutes.

20 And so we attempted to get everything in there,  
21 but the reality is we're trying to get -- we're trying to be  
22 comprehensive.

23 THE COURT: I get it. We'll get there.

24 MR. WOLFSHOHL: Yeah.

25 THE COURT: No. We get it.

1 MR. EISENBERG: Thank you.

2 THE COURT: Thank you, Mr. Eisenberg.

3 Mr. Lim, or --

4 MR. PARKINS: May I speak, Your Honor?

5 THE COURT: Absolutely.

6 MR. PERKINS: Thank you. Lenard Parkins, Parkins  
7 & Rubio, on behalf of Fortuna Investments.

8 Your Honor, I just represent a landlord --

9 THE COURT: Okay.

10 MR. PARKINS: -- and he has a store in Louisiana.  
11 He's a remote landlord. He doesn't live there. He doesn't  
12 run the property. A couple of issues I want to just raise:  
13 Number one, I don't want my client to be liable to the bank.  
14 If the family running the store is listening to these  
15 hearings and has already taken all the potato chips and  
16 everything out of the store and has moved it already, I  
17 don't want him to be liable for that.

18 Number two, I would think that any order,  
19 especially like we're dealing with my client in Louisiana,  
20 any order that is entered by the Court would be very helpful  
21 when the Sheriff shows up and says, what's going on here,  
22 when you're taking -- changing the locks and stuff, that the  
23 order is specific enough so that you can show the security  
24 people or the local police you have a legitimate federal  
25 court order authorizing you to do this so you can take

1 possession and protect the property.

2 Those two points, I think, are very important.

3 My experience with Louisiana is that they may not listen to  
4 any kind of order from anywhere, but having one will be very  
5 helpful for the landlords in order to try to protect their  
6 interest without interference or with -- maybe with the help  
7 of the security or local police, if there's a federal court  
8 order that gives the landlord authority to do such actions,  
9 especially now. During the night, they may have to go in in  
10 order to protect their property.

11 Thank you, Judge.

12 THE COURT: I get it. Thank you.

13 Mr. Lim, you'll eventually get here. Yes, sir.

14 MR. LIM: Thank you, Your Honor. Lloyd Lim on  
15 behalf of GSS Holdings and Fox Fuels.

16 I represent a group of about 40 convenience store  
17 operators, and we're concerned about the order to the extent  
18 that it transfers to the lender, to any other party the fuel  
19 that my clients have recently put in the ground by the Stay  
20 of Relief Order that it got last week --

21 THE COURT: It --

22 MR. LIM: -- or the inventory that it's  
23 purchased.

24 THE COURT: Got it. Well, I think where  
25 everybody came out today is, while I'm perfectly willing to

1 sign a Rule 70 order, I think everybody said, "Please don't  
2 do that to me today."

3 MR. LIM: Thank you, Your Honor.

4 THE COURT: Yes, sir. All right.

5 Mr. Kuebel, I think you were next. All right.

6 MR. KUEBEL: Good afternoon, Your Honor. Can you  
7 hear me?

8 THE COURT: Loud and clear. Thank you for  
9 checking.

10 MR. KUEBEL: Great. All right. Thank you.  
11 Omer F. Kuebel, III, appearing today for both P66, Phillips  
12 66 Company and the BFM, Brothers Food Mart related entities.

13 And I wanted to address the language that was  
14 raised by Blue Owl. And I do think that there are aspects  
15 of that language that we were supportive of. We do think  
16 that it would make sense for the landlords to be able to --  
17 and I referenced this earlier, Your Honor --

18 THE COURT: You did.

19 MR. KUEBEL: -- do an inventory and have a sale,  
20 but I was concerned about the prospect of turning that over  
21 -- turning those sale proceeds over strictly to the lender  
22 because there may be fuel suppliers, obviously, that have  
23 stepped forward to claim an interest. There may be PNSI  
24 vendors and thought that potentially a better way to handle  
25 this was that, if such a transaction occurred, that the

1 proceeds could be turned over to the Registry in the Court  
2 or to the Trustee so -- pending further order, so that, on  
3 the one hand, the landlords aren't stuck in limbo; but on  
4 the other hand, to the extent that there were proceeds  
5 liquidated, we made sure that all the various stakeholders  
6 had an opportunity to stake their claim to those proceeds  
7 and didn't just send it straight to the bank. No offense to  
8 Mr. Elrod's client.

9 THE COURT: Yeah. So I think what I was  
10 suggesting is that it allowed everybody to do this on a one-  
11 off basis, given their level of comfort and their particular  
12 circumstances. All I'm -- all I'm -- if the estate has no  
13 interest, all I'm effectively doing is putting you back to  
14 applicable estate law, which I think is where it ought to  
15 be.

16 Mr. Pomerantz, are you sure you want to weigh in  
17 on this?

18 MR. POMERANTZ: Your Honor, I'm happy to go last,  
19 I just would like --

20 THE COURT: Yeah.

21 MR. POMERANTZ: -- 30 seconds of your time, based  
22 upon a provision of the order, but I don't want to interrupt  
23 the flow of people, trading partners, addressing motions.

24 THE COURT: No. Go ahead.

25 MR. POMERANTZ: So, Your Honor, I've been

1 monitoring the proceedings in the last week and a half, and  
2 when I received the order -- actually, when I printed off  
3 the Docket, I didn't ask Mr. Wolfshohl for a copy; so he  
4 didn't send it to me. So I don't -- I don't fault him for  
5 that.

6 I noticed there's a provision in the order that  
7 supports the obligations of the Debtor and their  
8 professionals upon the convergence. And it not only does  
9 not track what Rule 1094 provides, but it goes further away,  
10 which I think has the effect of modifying Your Honor's DIP  
11 order.

12 Dealing with the second issue first, Your Honor,  
13 as Your Honor may recall, under the DIP order, there was a  
14 trust account established with my firm, weekly amounts of  
15 professional fees through the budget (glitch in the audio).  
16 Those monies were to be held in trust and once the  
17 applications were approved, they would be paid, of course,  
18 subject to Your Honor's final fee applications.

19 Just this morning I received -- and we have been  
20 operating under that procedure for the four and a half  
21 months of the case. Money has been coming in and coming  
22 out. We have been asked, through Mr. Healy, to provide the  
23 Trustee, over the last couple of days, with a full  
24 accounting of the monies that went in and the monies that  
25 went out; and we have provided that information to Mr. Healy



1 and assumed that he forwarded it on to the Trustee.

2 This morning we received an email from  
3 Mr. Wolfshohl's colleague asking for us to turn over to the  
4 Trustee all money in our -- in our trust account. And while  
5 we were in the process of preparing a response -- which we  
6 don't believe it's estate property. We believe it's trust  
7 account money, pursuant to the order -- lo and behold, in  
8 paragraph 7 of the order, the Trustee has added its language  
9 that requires us to turn over that money.

10 I'm not asking, Your Honor, for a ruling right  
11 now whether that is true or not. That would require Your  
12 Honor to go back and look in the -- into the DIP order. I'm  
13 happy to have a further conversation with Mr. Wolfshohl and  
14 try to convince him that, in the drinking from the firehose,  
15 he perhaps did not read paragraph 17 of the DIP order. But  
16 all I want to do is to make sure that there's nothing in  
17 this conversion order that prejudices that issue one way or  
18 the other, as well as the paragraph that comes after  
19 paragraph 8, which talks about a carve-out for Trustee  
20 professionals, which, of course, we have a problem with.  
21 But we don't want anything in this order to in any way  
22 impact the rights of the Debtors' professionals or expand  
23 what the obligations of the Debtors' professionals are under  
24 101.94 of the rules, which we, of course, will comply with.

25 THE COURT: Mr. Wolfshohl?

1 MR. WOLFSHOHL: Your Honor, I'm happy to have  
2 Your Honor look at it and modify it as you see -- deem  
3 appropriate. Normally, when a case gets converted like  
4 this --

5 THE COURT: Yeah.

6 MR. WOLFSHOHL: I -- I've never been in a  
7 situation where a Trustee didn't get retainers that were  
8 held, but I -- I'm not trying to upset whatever the DIP  
9 order requires.

10 THE COURT: Not retainers. I'll put in some  
11 language --

12 MR. WOLFSHOHL: Okay.

13 THE COURT: -- that preserves the status quo --

14 MR. WOLFSHOHL: Okay.

15 THE COURT: -- for that issue.

16 MR. WOLFSHOHL: That's fine.

17 THE COURT: I got that.

18 MR. WOLFSHOHL: I have no issue with that, Your  
19 Honor.

20 THE COURT: I wouldn't have expected you to --

21 MR. WOLFSHOHL: Yeah.

22 THE COURT: -- have known that. And if it turns  
23 out that something needs to happen, then it's another  
24 motion, another order.

25 MR. WOLFSHOHL: A separate hearing. Correct.

1 Right. I agree.

2 MR. POMERANTZ: The other aspect, Your Honor,  
3 they use language -- again, when people use different  
4 language from the statute, it is a breeding ground for  
5 problems. Rule 101.94 requires delivery of property and  
6 possession or control to the Trustee. They have deleted the  
7 word possession, and they've included the word dominion and  
8 custody.

9 I don't know what dominion or custody means  
10 separate from control or possession, but, Your Honor, I'm  
11 not sure why we even need paragraph 7 in there at all. We  
12 have our obligations. We are seasoned professionals. We  
13 will, of course, comply with the obligations. But if there  
14 is going to be language, I would ask that it track exactly  
15 the language of Rule 101.94.

16 (Pause in the proceedings.)

17 THE COURT: All right. I will put this up for  
18 everybody before -- but I got that issue. Sorry for the  
19 delay.

20 All right. Anyone else before I go back and  
21 start editing?

22 MR. LIM: Your Honor, if I may?

23 THE COURT: Sure.

24 MR. LIM: Your Honor, again, Lloyd Lim on behalf  
25 of GSS Holdings and Fox Fuels.

1 I've just looked at the order for the first time  
2 on my cell phone, but I'm concerned that any provision in  
3 there would be read to allow the landlords to occupy, you  
4 know, occupy locations where they're being operated and the  
5 subtenant operators have not been evicted under applicable  
6 state law.

7 So we would ask that, if the Court intend this,  
8 to just put everybody back to where their state rights --  
9 law rights were, that that's what the orders say. But we  
10 would object to it allowing the landlords to dispossess the  
11 operators at this point.

12 THE COURT: Okay. All right. Thank you.

13 Mr. Eisenberg, go ahead.

14 MR. EISENBERG: Yes, Your Honor. That's the  
15 point that there's no agreement with them whatsoever. The  
16 leases are terminated, and we want to take possession of our  
17 property.

18 THE COURT: Right. But I think all Mr. Lim was  
19 saying is that you've got to follow a legal process to do  
20 that.

21 MR. EISENBERG: Yes. And we're here in this  
22 court to do that. The -- they can put on whatever the  
23 rights they think that they have here, but we -- we've got a  
24 hearing at 4:30, and we -- somebody's going to try to hold  
25 over after Your Honor terminates these leases?

1 THE COURT: I get it.

2 MR. EISENBERG: Okay.

3 THE COURT: I'm just giving you the opportunity  
4 to --

5 MR. EISENBERG: Thank you.

6 THE COURT: -- make your record.

7 MR. EISENBERG: Yes.

8 THE COURT: All right.

9 Mr. Melko?

10 MR. MELKO: Yes, Your Honor. Thank you. John  
11 Melko on behalf of SASS Petroleum.

12 We had made a couple of minor comments to the  
13 order which have been largely accommodated. So we  
14 appreciate Ms. Williamson and Mr. Wolfshohl's work there, as  
15 well as the whole Trustee team and the lenders as well.

16 We do have one small remaining issue, and this is  
17 consistent with Your Honor saying, "I'm letting people go  
18 their own way."

19 Judge, you'll recall that SSAS Petroleum is a  
20 50 percent owner of U.S. Fueling, which is an LLC that's  
21 half owned by Debtor BNC, and it's half owned by my -- by  
22 SASS Petroleum.

23 By contract, Debtor MEX, or Mountain Express, is  
24 the operator, and the -- so -- and with the fuel supply --  
25 and it also -- MEX is also the fuel supplier to that LLC,

1 which, in effect, acts, then, as a subjobber to 85 separate  
2 stations. We need somebody to step in as operator or as  
3 manager of that LLC. My client is ready, willing, and able  
4 to do it.

5           Your Honor, I don't know that Ms. Northrup or  
6 Mr. Elrod is particularly interested in being the operator  
7 of a -- of a gasoline jobber. So if we can either have an  
8 agreement or a provision in the order that would permit  
9 SASS, pending further resolution of the ownership, which I  
10 think may be presented to Your Honor shortly, not today,  
11 we'd appreciate it. Because somebody has to operate that  
12 and get fuel to the -- to the stations.

13           THE COURT: So what you're suggesting is that you  
14 simply want to substitute your client for the Debtor as the  
15 operator of the entity. Did I get that about right?

16           MR. MELKO: Yes.

17           THE COURT: All right.

18           MR. MELKO: Yes. And there's two Debtors  
19 involved in it. So the operator is actually, or the  
20 manager, to be precise, is actually Mountain Express. The  
21 ownership is in BNC. We're not -- we're not looking to  
22 affect the ownership, only the operatorship because  
23 otherwise it's just going to lay dormant in those 85 dealers  
24 who are not in privity with the Debtor. Their privity with  
25 U.S. Fuels will be stranded.

1 THE COURT: Mr. Wolfshohl?

2 MR. WOLFSHOHL: Thank you, Your Honor. We had  
3 negotiated a deal to sell the interest to accommodate this  
4 issue. I don't have a problem with the concept. I mean,  
5 we're not going to be able to operate, and there does need  
6 to be somebody that operates that.

7 THE COURT: So let me propose this because I do  
8 not want to make this order any more complicated than it  
9 needs to be: It would seem to me, Mr. Melko, at least what  
10 I heard, is that the Trustee is amenable to letting your  
11 client simply substitute as the operator with all other  
12 rights and benefits, burdens of the agreement, that I  
13 haven't seen, remaining intact. It seems to me that a  
14 really short stipulation and agreed order that would be  
15 separate could be done potentially this afternoon.

16 Mr. Elrod, do you have an interest in that if it  
17 only substitutes the operatorship with no -- with nothing  
18 else affected?

19 MR. ELROD: Your Honor, I do not have those  
20 documents in front of me. I'm aware, obviously, of the  
21 offer from Mr. Melko and not to bring up the Court's prior  
22 ruling, but the issue would potentially have been solved had  
23 the Court considered that that proposed sale. But  
24 nonetheless, as I sit here right now, I'm not aware of any  
25 interest that we would have in that, Your Honor.

1 THE COURT: All right. So what I want -- I want  
2 you to run that stipulation by Mr. Elrod just so he sees it.

3 MR. WOLFSHOHL: Yes, sir.

4 THE COURT: But I -- I'm -- what I'm  
5 contemplating is just a couple of sentences that references  
6 the agreement, and if there's a definitional substitution,  
7 just do that. Sign it. Get it to me. I'll sign it, turn  
8 it around, and that way --

9 MR. WOLFSHOHL: It's seamless.

10 THE COURT: Yeah.

11 MR. WOLFSHOHL: Yeah, I agree.

12 THE COURT: Okay.

13 MR. WOLFSHOHL: Thank you, Your Honor.

14 THE COURT: All right. Mr. Melko, can you --

15 MR. MELKO: Thank you, Your Honor.

16 THE COURT: -- can you have your team accomplish  
17 that?

18 MR. MELKO: We will. Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Ms. Stoian? It -- hold on. I have too many  
21 screens -- oh --

22 MS. STOIAN: Can you hear me, Your Honor?

23 THE COURT: Yes, ma'am. Thank you. I was  
24 worried that I couldn't.

25 MS. STOIAN: Yeah. I had to unmute myself.



1 Rachel Stoian, Dorsey & Whitney, appearing on behalf of Nine  
2 Shell Gas Stations OK, LLC.

3 I wanted to reiterate a concern that was raised  
4 by Counsel who is in the courtroom. I -- I'm sorry that I  
5 do not know his name, but as Counsel to an operator, the  
6 ordered termination of all real property leases is  
7 concerning. Under the Code, as you're well aware, 365(h)  
8 provides rights to non-debtor lessees of rejected leases.

9 Here everything's being rejected and could be  
10 read to mean all operators are going to have to leave their  
11 premises, which I think, based on my sitting through  
12 numerous of these status conferences, really runs against  
13 what Your Honor was hoping the ultimate outcome may be here  
14 -- that folks would be able to continue operating these  
15 stations.

16 So I wanted to raise the concern that an order,  
17 as presently constituted, really undercut some of the rights  
18 for a lot of operators, including my client, and I believe a  
19 number of others have similar concerns. So I wanted to  
20 raise that. I don't know if -- whether it's something that  
21 could be resolved by way of stipulation similar to that that  
22 was just described for Mr. Melko's client with my client  
23 substituting in as operator even though they are the  
24 operator.

25 I'm -- I'll be honest and say I'm still trying to

1 figure out a good way to approach this, recognizing that  
2 we're converting to 7 and carrying these leases doesn't make  
3 a lot of sense. So I wanted to put that on the Record that  
4 my clients do presently object to the form of the order to  
5 the extent it terminates their rights to occupy those  
6 premises. That --

7 THE COURT: Got it.

8 MS. STOIAN: -- as a thought.

9 THE COURT: Thank you. No. I got it.

10 Thank you.

11 Let's see. That was Ms. Stoian.

12 Mr. Turner? Mr. Turner, I can't hear you. Had  
13 you hit five star on your phone, or do you perhaps have me  
14 muted from your side? There you go.

15 MR. TURNER: Okay. Didn't even know I had to do  
16 it on the phone as well. Paul Turner, Womble Bond, for  
17 Equilon Enterprises.

18 I just want to clarify, Your Honor, that my  
19 understanding of what you were saying is that, with respect  
20 to certain elements of the order with respect to the fuel  
21 distributors, would be supported through that with a draft  
22 up on the screen and people making suggestions; is that  
23 correct? Or did I misinterpret?

24 THE COURT: No. When I've heard from everybody,  
25 I'm going to take a break, and I'm going to make certain

1 changes to the order, which I will then publish on the  
2 screen, and you will have an opportunity to comment on. No  
3 guarantees that I take any of the comments --

4 MR. TURNER: Of course. Of course. Go ahead.

5 THE COURT: -- but yes.

6 MR. TURNER: Very good. Thank you.

7 THE COURT: Yes.

8 MR. TURNER: I just wanted to make sure I had a  
9 sense. Thanks.

10 THE COURT: Oh, yes, sir. All right.

11 Anyone else?

12 (No audible response.)

13 THE COURT: All right. Then what I would like to  
14 do -- it is 4:53 Central. I would like for everyone to come  
15 back at 5:05, and I just -- I need -- I need theoretical  
16 quiet time to go through the order and process the comments  
17 that I've heard. I'll then come back. I'll put it up on  
18 the screen. I'll give everybody an opportunity to say, no,  
19 that -- no, that doesn't work. It doesn't solve my  
20 objection.

21 And I'm not going to solve everybody's objection.  
22 Not possible. But I will -- I will do my best to address  
23 the issues. All right?

24 If you want to step out in the hall, please come  
25 and go as you see fit. But we're going to be adjourned

1 again -- why don't we say this -- until 5:10 Central Time?

2 So that's roughly 16 minutes.

3 All right. Thank you, everybody.

4 SEVERAL VOICES: Thank you, Your Honor.

5 (Recess taken from 4:53 p.m. to 5:12 p.m.)

6 AFTER RECESS

7 MALE SPEAKER: In paragraph 9, there's still a  
8 bracket around the dollar amount, Your Honor, I believe.

9 THE COURT: Is that agreed to?

10 MALE SPEAKER: It's -- I believe the DIP lenders  
11 -- Ms. Heyen sent me an email beforehand, and I believe that  
12 that was agreed to.

13 THE COURT: Okay. I just didn't know.

14 MALE SPEAKER: Yeah. I know I submitted it that  
15 way.

16 THE COURT: Okay. Other than that, I'm not  
17 asking whether you agree with everything. You're certainly  
18 free to argue against it.

19 MALE SPEAKER: Yeah. I think other than that, I  
20 don't -- I don't -- I mean, I -- I think it accomplishes  
21 what I was expecting, Your Honor.

22 THE COURT: Okay. All right. Let's see. Let me  
23 put this -- let me put this up.

24 Mr. Eisenberg, I know you're old school. Would  
25 it help you if I printed you out a copy, or can you read on

1 the screen?

2 MR. EISENBERG: If you printed me a copy, Your  
3 Honor, that would be marvelous.

4 THE COURT: Sorry. I'll make this bigger for  
5 everybody, and I can -- I'll print out a couple. Just give  
6 me a minute.

7 (Pause in the proceedings.)

8 THE COURT: You folks ready for me to roll  
9 forward?

10 (No audible response.)

11 THE COURT: Mr. Lim, if you wanted a hard copy,  
12 we have some extras.

13 MR. LIM: Thank you, Your Honor.

14 THE COURT: Sure.

15 All right. Let me -- let me start.

16 Ms. Williamson, is it possible for you to turn  
17 your camera back on?

18 (No audible response.)

19 THE COURT: All right. So, Ms. Williamson, first  
20 of all, did I -- did I encompass what you -- what you were  
21 trying to tell me?

22 (No audible response.)

23 THE COURT: Ah, Ms. Williamson, hold on. Hold  
24 on. I moved all my screens around to be able to do this.  
25 Give me just a second.

1                   How about now?

2                   (No audible response.)

3                   THE COURT: Ms. Williamson, I still can't hear  
4 you. Did you hang up, perhaps, or something? Did you hit  
5 five star again maybe? Or do you have me muted from your  
6 side?

7                   There you are. Somehow you got disconnected.  
8 All right.

9                   MS. WILLIAMSON: Your Honor, again, Deborah  
10 Williamson, representing Valero Marketing and Supply  
11 Company.

12                   I think it would be helpful, because this order  
13 is going to be around for a while, if we can make fuel  
14 supplier capital F -- capital F and then drop a footnote,  
15 included and not limited to.

16                   And I have the list of names. While we were  
17 waiting here, I've been confirming the proper names to  
18 include in there. And that way there's no question which --  
19 a specific fuel supplier was included within this order.  
20 And it says in paragraph 3 -- and I can email the list to  
21 the Court.

22                   The other question that we had, looking at it,  
23 and I forget which paragraph number it is -- "The Court  
24 provides that we're not required to give notice to the  
25 Debtor or the Trustee." I think it should be to anybody --

1 THE COURT: I --

2 MS. WILLIAMSON: -- because we don't want to --

3 THE COURT: -- I'm unwilling to do that.

4 MS. WILLIAMSON: Okay.

5 THE COURT: I don't -- I don't know who anybody  
6 else is, and I'm not going to affect anybody's rights except  
7 those folks that I know I have jurisdiction over.

8 MS. WILLIAMSON: Appreciate that, Your Honor.  
9 Then we will -- we will -- we will live with what we have.

10 THE COURT: And, Ms. Williams, you'll send me  
11 that list or send it to Mr. Alonzo, or --

12 MS. WILLIAMSON: I will send it right now, Your  
13 Honor.

14 THE COURT: All right. Thank you.

15 All right. No particular order. Anyone else  
16 have a comment? Complaint? Question?

17 Mr. --

18 MS. CROCKER: Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. CROCKER: I apologize. Michaela Crocker with  
21 Katten on behalf of Sunoco.

22 Apparently, I read a little slower than everyone  
23 else. If I could see paragraph 6 again, please?

24 THE COURT: Of course.

25 MS. CROCKER: Thank you.

1 THE COURT: Uh-huh.

2 Mr. McFaul, while she's reading, did you have  
3 something you wanted to raise?

4 MR. MCFAUL: No. I just wanted to thank the  
5 Court. Paragraph 5 looks perfect, and this is going to  
6 sound like a -- an absurd request, but there's been some  
7 ongoing confusion with product orders, diesel orders from  
8 MEX, and if Mr. Wolfshohl or somebody on Ms. Northrup's team  
9 can just confirm, for the Record, a client request that  
10 there will be no further orders of petroleum by the Debtors,  
11 it would be helpful for practical purposes --

12 THE COURT: I'm guessing --

13 MR. MCFAUL: -- as odd as it sounds.

14 THE COURT: -- I'm guessing that's easy.

15 MR. WOLFSHOHL: That's the easiest thing I've  
16 answered all day. Absolutely not. And we've locked down  
17 accounts and everything and taken precautions to make sure  
18 that things don't happen outside of our control.

19 MR. MCFAUL: Thank you, Your Honor.

20 THE COURT: All right. Thank you, Mr. McFaul,  
21 Mr. Abood? Let's see. Mr. Abood, have you  
22 hidden -- had you hit five star, or do you have me muted  
23 from your side, perhaps?

24 (No audible response.)

25 THE COURT: I haven't seen you yet. I'll come



1 back around.

2 Anyone else have -- Mr. Turner? Yes, sir?

3 MR. TURNER: Can you hear me okay, Your Honor?

4 THE COURT: Yes, sir. Thank you.

5 MR. TURNER: Very good. Again, Paul Turner for  
6 Equilon Service.

7 And I guess the one question/request that I would  
8 have is whether we could make a little bit more explicit  
9 that, with respect to the terminated contracts for the fuel  
10 suppliers, that the intellectual property, i.e., the  
11 trademarks, trade address and service parts -- their rights  
12 under those terminated contracts don't exist anymore. Just  
13 to clarify that because those sorts of IP rights are very  
14 important, too.

15 THE COURT: Mr. Wolfshohl?

16 MR. TURNER: If they could just -- to make it a  
17 bit more explicit, that the rights and -- the rights to any  
18 use of the trademarks, trade address, service marks, and  
19 color schemes granted by the agreements that are terminated  
20 are also terminated.

21 MR. WOLFSHOHL: I didn't hear that last part.

22 THE COURT: If you just look at the screen,

23 MR. TURNER: Are also terminated.

24 MR. WOLFSHOHL: Got it.

25 MR. TURNER: All right. That's already better.

1 And that's the personal comment I had.

2 MR. WOLFSHOHL: All right. I don't have an issue  
3 with it. Obviously, I mean, if the DIP lender somehow  
4 thinks that that has value, and it's the DIP lender's  
5 collateral, perhaps, I -- but the Trustee doesn't have any  
6 issue with that, Your Honor.

7 THE COURT: So I mean, I don't -- I don't know  
8 that. I don't not know that. So I get it. Okay.

9 MR. TURNER: Very good. Thank you, sir.

10 THE COURT: Thank you. Now, subject to --  
11 Mr. Turner, don't go away, because I'm going to hear from  
12 Mr. Elrod --

13 MR. TURNER: Right.

14 THE COURT: -- once I get comments, and we may  
15 revisit this issue.

16 MR. TURNER: No worries. Thank you, sir.

17 THE COURT: Thank you. All right.

18 Mr. Abood, I think I now have -- I now think I  
19 have you live. Could you say something, please?

20 MR. ABOOD: Your Honor, this is Norman Abood.

21 THE COURT: Yes, sir. Thank you.

22 MR. ABOOD: Thank you for your patience.

23 The language in the -- I think it's the sixth  
24 paragraph, or maybe it's up above. No. I'm sorry. The  
25 second paragraph regarding the nonresidential leases. The

1 language or the language that's proposed that indicates  
2 termination -- and Ms. Stoian raised his earlier, and I've  
3 been researching, and I found *Austin Developer v. Citgo*  
4 *Petroleum*. Our concern is that the rejection not affect the  
5 termination or an implied forfeiture of the rights of the  
6 sublessees.

7 THE COURT: So you need to -- you need to read --  
8 you need to read that paragraph very carefully. I addressed  
9 that issue --

10 MR. ABOOD: Okay.

11 THE COURT: -- as best I think I can. I'll come  
12 back once you've had time to think about it.

13 Ms. Stoian?

14 MR. ABOOD: Thank you.

15 MS. STOIAN: Thank you, Your Honor.

16 Rachel Stoian of Dorsey & Whitney, appearing on behalf of  
17 Nine Shells Gas Stations OK, LLC.

18 I have reviewed Your Honor's revisions to  
19 paragraph 2, and I do appreciate the time that you took to  
20 make that change distinguishing between where Debtor is  
21 lessee versus Debtor as lessor.

22 My concern remains, however, that my client, as a  
23 lessee, where the Debtor is -- it's two steps down the line.  
24 And if the prime lease is terminated, what rights remain  
25 with my client as the subtenant even if it's just rejected?

1 I guess that would be my concern that, if that prime lease  
2 is terminated, does it, in effect, extinguish the rights  
3 that would have been preserved --

4 THE COURT: So --

5 MS. STOIAN: -- had the sublease just --

6 THE COURT: Ms. Stoian --

7 MS. STOIAN: -- be rejected versus terminated?

8 THE COURT: -- so I totally -- I totally  
9 understand the issue. I'm -- I think that I have limits  
10 under 365. I think that I've done my best to leave intact  
11 whatever rights may have existed. You know, being a  
12 subtenant, as you know, is not the best place in the world  
13 to be in a bankruptcy case. I also think the issue that  
14 you're raising is one that I find really interesting. I  
15 also think it requires an adversary proceeding.

16 MS. STOIAN: Understood, Your Honor.

17 THE COURT: All right. Thank you.

18 Ms. Crocker?

19 MS. CROCKER: Yes, Your Honor. And my apologies  
20 if this is already at the bottom of the order, but I don't  
21 recall seeing a waiver of the 14-day stay.

22 THE COURT: Nope. Hadn't gotten there yet.

23 MS. CROCKER: Apologies.

24 THE COURT: No, no, no. I -- it's -- I should  
25 have said something. I -- there's an issue that I think

1 that Mr. Elrod's going to raise, and I want to hear it  
2 before I decide what to do. All right.

3 Mr. Newman?

4 (No audible response.)

5 THE COURT: Ah, Mr. Newman, had you hit five star  
6 on your phone?

7 There you are.

8 MR. NEWMAN: Now?

9 THE COURT: Yes, sir. I can hear you now. Thank  
10 you.

11 MR. NEWMAN: I tried -- I tried, Your Honor, and  
12 I guess I didn't do it right. You can hear me now, though?

13 THE COURT: Uh-huh. Loud and clear. Thank you.

14 MR. NEWMAN: Thank you. I just wanted to ask the  
15 Court whether it's your understanding, for the Record, or if  
16 it should be clarified in the order with respect to the  
17 additional carve-outs contained in -- I -- it's a little  
18 small on my screen, but I believe it's paragraph 7, is it?

19 THE COURT: I think --

20 MR. NEWMAN: But those are in addition?

21 THE COURT: Are you talking about the -- are you  
22 talking about the million five?

23 MR. NEWMAN: Yes, Your Honor.

24 THE COURT: So as I understand it -- and we can  
25 get clarification -- and I can make this bigger -- is that

1 is an agreement that has been negotiated between the Trustee  
2 and the DIP lender, and I really -- I kept their language.  
3 The only thing I did was to take out the brackets because  
4 Mr. Wolfshohl told me that he thought that there was an  
5 agreement as to the amount.

6 MR. NEWMAN: And my only comment, Your Honor, is  
7 that there are other carve-outs provided for in the DIP  
8 order, and I just want it to be clear that this is in  
9 addition to any carve-outs provided for the DIP order.

10 THE COURT: That is my understanding.

11 MR. WOLFSHOHL: It's not meant to disrupt the DIP  
12 order at all, Your Honor.

13 THE COURT: All right.

14 MR. WOLFSHOHL: I do have a change to that just  
15 because there were some -- the way it's drafted, and  
16 obviously I'll want the lenders' Counsel to weigh in on it,  
17 but I don't think they're going to have an issue with it.  
18 It's at the end of it, Your Honor. It's romanette iii. It  
19 reads "Currently necessary expenses related to records  
20 retention." And I would like it to say instead of related  
21 miscellaneous administrative expenses and then of the  
22 bankruptcy estate rather than the Chapter 7 estate with a  
23 comma after estate to say, including but not limited to  
24 trust fund taxes incurred since the Trustee's appointment.

25 I think that that was understood that that was

1 within the spirit of what we were talking about with the  
2 lenders. So I'd like them to weigh in, but that's something  
3 that's obviously very important to Ms. Northrup, especially  
4 because a lot of those taxes haven't come due yet.

5 THE COURT: Did that accomplish what you -- and,  
6 again, I'm going to go to Mr. Elrod --

7 MR. WOLFSHOHL: Of course.

8 THE COURT: -- but I didn't want to bounce back  
9 and forth with him.

10 MALE SPEAKER: Yeah. And, Your Honor, just to be  
11 clear, the -- this is not intended to disrupt the DIP order  
12 or other orders. I think there's an order regarding Raymond  
13 James's retention that reflects rights under the carve-out.

14 THE COURT: So I will absolutely -- this is --  
15 this doesn't change any prior order.

16 MR. WOLFSHOHL: There's a -- there's a not  
17 between but and limited, Your Honor, that needs to go in  
18 there.

19 THE COURT: I'm sorry? What?

20 MR. WOLFSHOHL: There needs to be a not between  
21 but and limited including but not limited to.

22 THE COURT: Got it. That would change the  
23 meaning, wouldn't it?

24 MR. WOLFSHOHL: Yes. It's very significant.

25 MALE SPEAKER: I might have gotten fired over

1 that one, Your Honor.

2 THE COURT: Fair enough. All right. Fair  
3 enough.

4 MALE SPEAKER: Very significant.

5 THE COURT: All right. Fair enough.

6 And, Mr. Newman, does that give you the comfort  
7 you were looking for?

8 MR. NEWMAN: Yeah. I think Your Honor said you  
9 don't intend to change any existing orders that are  
10 (indiscernible).

11 THE COURT: Absolutely not.

12 MR. NEWMAN: Thank you, Your Honor.

13 THE COURT: All right. All right. Anyone else  
14 before I go to Mr. Elrod?

15 Oh, Mr. Eisenberg, absolutely. Come on up.

16 MR. EISENBERG: I'm assuming Mr. Elrod is going  
17 to take a while. I might want to get in there first. So I  
18 know you put in -- if you could pull back up paragraph 2,  
19 Your Honor?

20 THE COURT: Of course.

21 MR. EISENBERG: And you've got -- you've got  
22 licenses and -- but can we -- can we have -- can we include  
23 all licenses for branding at the locations or branding or  
24 for the use and sale of food products at the locations that  
25 the terminated leases are?



1 THE COURT: So I don't -- I want to make sure I  
2 understand what you're saying.

3 MR. EISENBERG: I want it to read right. So --

4 THE COURT: Sure.

5 MR. EISENBERG: -- I apologize.

6 THE COURT: So all licenses or branding --

7 MR. EISENBERG: For --

8 THE COURT: -- for the use or sale of food  
9 products at --

10 MR. EISENBERG: No, no. It's just the brand  
11 itself, Your Honor. All licenses, all branding. It's not  
12 just for the sale of food products. The brand -- the name  
13 on the service station itself belongs to us.

14 THE COURT: So you got to give me some context.

15 MR. EISENBERG: Yes, sir. We have a license  
16 agreement. It brands the Brothers' name.

17 THE COURT: This says for -- okay. So --

18 MR. EISENBERG: And --

19 THE COURT: -- they get to put the Brothers' name  
20 on the top of the --

21 MR. EISENBERG: Right.

22 THE COURT: -- service station.

23 MR. EISENBERG: And the colors and use the fried  
24 chicken recipes and the other things. And that's what we  
25 need to make sure that it's not just limited to the use of

1 sale of food products.

2 (Pause in the proceedings.)

3 THE COURT: Is that what you're looking for?

4 MR. EISENBERG: Yes, Your Honor. Thank you.

5 THE COURT: Okay.

6 MR. EISENBERG: And then just to clarify and I  
7 guess, albeit for me to ask about a Bankruptcy Code Section,  
8 but the leases are being rejected and terminated under  
9 Section 365 of the Code?

10 THE COURT: So, again, with respect to -- I don't  
11 think that 365 actually deals with lease termination.

12 MR. EISENBERG: Yes, sir.

13 THE COURT: It deals with rejection.

14 MR. EISENBERG: Yes, sir.

15 THE COURT: But the -- what I have heard is that  
16 what everybody -- because of the current situation, what  
17 everybody has agreed to, to the extent where the Debtor is a  
18 lessee, that the leases are being rejected under 365 and  
19 terminated.

20 MR. EISENBERG: Yes.

21 THE COURT: And, again, with the issue raised by  
22 Ms. Stoian, I think she's right, to the extent that her  
23 clients have any rights, and I'm not determining that they  
24 do or they don't. I think that 365 says what it says.

25 MR. EISENBERG: Yeah.

1           THE COURT: I don't -- I'm not going to begin to  
2 profess that I understand real property law in 50 different  
3 states. I'm trying to leave -- you know, the rejection  
4 operates as a rejection, and I'm not trying to figure out  
5 what happens. I fully expect that this is not the last time  
6 I'll deal with this dispute, but I do think it would be a  
7 separate targeted motion on a particular set of facts.

8           MR. EISENBERG: Right. I just wanted to clarify  
9 they're deemed rejected under Section 365 --

10          THE COURT: Yeah.

11          MR. EISENBERG: -- the provisions of 365. Thank  
12 you.

13          THE COURT: Yes, sir. All right.

14          MR. MAYER: Your Honor, it was mentioned earlier  
15 -- Simon Mayer on behalf of the BFM entities.

16          THE COURT: Uh-huh.

17          MR. MAYER: It was mentioned earlier, but I  
18 didn't see it in here, the ability of landlords to secure  
19 the properties once the leases have been rejected, and I  
20 think --

21          THE COURT: So I'm going to be careful about that  
22 one. What I am willing to do -- because I think, otherwise,  
23 we need to follow applicable law. What I am absolutely  
24 willing to do is that the owners of any abandoned location  
25 may absolutely enter to secure the premises. I don't have

1 any issue at all with that. To the extent that there's  
2 someone in a state, whose law that I am not aware of, has a  
3 possessory right, I'm not going to inadvertently terminate  
4 that. And, also, it's hard to make an argument, absent some  
5 further evidence, that you're at risk if there's somebody  
6 actually in the location.

7 MR. MAYER: So can we get language on the  
8 abandonment?

9 THE COURT: Yeah. No. That's why -- you see me.  
10 I just did paragraph 3. I just haven't written it yet.

11 MR. MAYER: Okay.

12 THE COURT: All right.

13 (Pause in the proceedings.)

14 THE COURT: What do you call these things? What  
15 term are they?

16 MR. MAYER: I think the term they've used -- I've  
17 seen used, Your Honor, is C-Store, but I don't -- that might  
18 not apply to larger fueling stations.

19 THE COURT: But you're the only one that's  
20 complaining. So if I use C-Store --

21 MR. MAYER: C-Store, I think, is fine.

22 THE COURT: C-Store or --

23 MR. MAYER: C-Store.

24 THE COURT: Okay. Is the C capitalized?

25 MR. MAYER: C is capitalized. I believe store is

1 -- the S is capitalized as well.

2 (Pause in the proceedings.)

3 THE COURT: Does that work for you?

4 MR. MAYER: Except as --

5 FEMALE SPEAKER: Typo (inaudible).

6 MR. MAYER: -- protect and maintain property.

7 THE COURT: Okay. And if there's an issue --

8 MR. MAYER: Thanks, Your Honor.

9 THE COURT: And, again, I fully recognize there  
10 are going to be issues, but if there are issues with  
11 specific facts, I want the parties to have due process. I  
12 want -- I want a targeted set of facts. I want to be back  
13 in here so I can deal with it specifically.

14 MR. MAYER: Yes, Your Honor.

15 THE COURT: But to the extent that we've got  
16 emergency situations out there, like the one that was  
17 attached to your 807 Notice --

18 MR. MAYER: Right.

19 THE COURT: -- which, again, I really appreciate,  
20 that's something -- you need to be out there tomorrow.

21 MR. MAYER: Yes, Your Honor.

22 THE COURT: And that's what I want you to have  
23 the ability to do. All right.

24 Mr. Parkins?

25 MR. PARKINS: I raised the objection earlier.

1 Can I have my client's lease included in the properties  
2 abandoned, too?

3 THE COURT: Say that again.

4 MR. PARKINS: The Fortuna lease with the Debtor  
5 just so I can call it the Fortuna lease in Louisiana.  
6 That'll be good enough to describe it if you can do that.

7 THE COURT: And what is it that you want?

8 MR. PARKINS: I want -- if that property is  
9 abandoned tonight, I want my landlord to be able to go in  
10 and secure it just like you provided.

11 THE COURT: So is your --

12 MR. PARKINS: Yeah. Abandoned C-Store. Okay.

13 THE COURT: Well, C-Store --

14 MR. PARKINS: C-Store is just a generic name?

15 THE COURT: -- I'm told, is a -- is a term of  
16 art.

17 MR. PARKINS: Consumers. Okay. I'm good, then.  
18 I will sit down at being an idiot. Thank you.

19 THE COURT: Okay. No, no, no. I -- again, I'm  
20 dealing in an area that I don't profess to know even close  
21 to everything.

22 MR. PARKINS: Okay. Thank you, Judge.

23 THE COURT: All right. Anyone else before I go  
24 to Mr. Elrod?

25 Mr. Platt?

1 MR. PLATT: Your Honor, two things very quickly:  
2 Back -- if we could go to -- back on paragraph 2, the last  
3 -- the licensing and branding sentence.

4 THE COURT: Yeah.

5 MR. PLATT: If there is -- if there is any way  
6 that that could be a separate paragraph, that would be ideal  
7 because they're -- some of those licenses are -- the fuel  
8 suppliers have licenses that would come under that  
9 description as well. So to the extent that there would  
10 be --

11 THE COURT: So --

12 MR. PLATT: Yeah. We would like to suggest that  
13 that only relates to the real property leases --

14 THE COURT: So --

15 MR. PLATT: -- and landlord issues.

16 THE COURT: I never read it that way. It says  
17 what it says --

18 MR. PLATT: Right.

19 THE COURT: -- and if you feel good, if I put in  
20 an extra return, then you got an extra return.

21 MR. PLATT: Okay. I feel good, Your Honor.

22 THE COURT: All right.

23 MR. PLATT: And then, lastly, I guess now -- what  
24 is now paragraph 7 -- if we could go back to that? I know  
25 that you and Ms. Williamson had a discussion about the

1 notice issue.

2 THE COURT: Oh, that's it.

3 MR. PLATT: Oh, I'm sorry. I guess it's  
4 paragraph -- it's paragraph 8 now.

5 THE COURT: Yeah.

6 MR. PLATT: The notice -- that you didn't want it  
7 to say that -- no notice to anyone. Could the language say  
8 no notice is required to any of the Debtors or the Trustee  
9 or any operator?

10 THE COURT: No. Because I don't know what rights  
11 they have. The Trustee and the Debtors ultimately answer to  
12 me, and so I'm perfectly comfortable doing that, but I'm not  
13 going to prejudge anyone else's rights that haven't -- many  
14 of those folks probably don't even know about this hearing,  
15 and so I'm not -- I'm not willing to do that.

16 MR. PLATT: Understood.

17 THE COURT: All right. Thank you.

18 MR. PLATT: Thank you, Your Honor.

19 THE COURT: All right. Mr. Abood, did you raise  
20 your hand again?

21 MR. ABOOD: I did, Your Honor.

22 THE COURT: Okay.

23 MR. ABOOD: Just so I -- I'm sorry to bother you  
24 about this paragraph 2, but my clients are really concerned  
25 that -- what some of the landlords are understanding. And



1 I've reread your language, and I appreciate your correction  
2 of my reading of it earlier. You're talking about with  
3 regard to the subtenants, those leases are rejected.

4 But if you would be so kind as to consider  
5 anything that says that that does not imply a forfeiture or  
6 termination of a subtenant's rights, that's one request.

7 The other is just a clarification, and it may not  
8 be necessary, but I'm going to ask it because I'm getting  
9 asked by all kinds of people right now --

10 THE COURT: Sure.

11 MR. ABOOD: -- is what this process would be. I  
12 -- because you mentioned an adversary proceeding. If  
13 there's a dispute over the leases, are you anticipating --  
14 the relationship between the property owner and the  
15 sublessee -- are you anticipating that to be addressed by an  
16 adversary proceeding, or would it be through a state court  
17 proceeding?

18 THE COURT: I think the -- the question that you  
19 asked -- that resolution would occur through a state court  
20 proceeding.

21 MR. ABOOD: Thank you.

22 THE COURT: Yes, sir. And with respect to the  
23 first request, I'm going to decline to do that.

24 MR. ABOOD: Thank you.

25 THE COURT: All right. Thank you.

1 All right. Mr. Elrod, I think we're now to you.

2 MR. ELROD: Thank you, Your Honor. Can you hear  
3 me?

4 THE COURT: Yes, sir, loud and clear. Thank you.

5 MR. ELROD: Okay. Your Honor, I believe we don't  
6 have any issues with the language in the order. I did want  
7 to -- I haven't had a good chance to take a look at the --  
8 since I'm not in the courtroom, I didn't have a copy, but if  
9 I understand the import of the language, you're not  
10 requiring affirmatively that the DIP agent exercise its  
11 state law rights and remedies; is that correct?

12 THE COURT: I left that open to you. I assumed  
13 that -- you asked for time, and by just practical effect,  
14 I'm giving you that time. I absolutely believe that  
15 someone, in the midst of all of this, will file something,  
16 and we'll just deal with it as we deal with it. But no, I'm  
17 giving you the time that you asked for.

18 MR. ELROD: Okay. Thank you. Thank you, Your  
19 Honor.

20 I've been in communication with my client on next  
21 steps, but we just wanted to make sure we had time to set up  
22 the appropriate mechanism for that.

23 THE COURT: Okay. All right.

24 Last opportunity, everyone.

25 Ms. Surinak, you've been awfully quiet, which

1 always troubles me just a little. You okay?

2 MS. SURINAK: Yes, Your Honor. We reviewed the  
3 order, and we're just fine with the revisions.

4 THE COURT: All right. Thank you.

5 Then let me do this.

6 (Pause in the proceedings.)

7 THE COURT: Do we have -- do we have Trustees  
8 still here?

9 UNIDENTIFIED SPEAKER: (Inaudible), Your Honor.

10 MS. CROCKER: Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. CROCKER: Michaela Crocker on behalf of  
13 Sunoco. Just going back to the issue on the waiver of the  
14 14-day stay, I'm just concerned.

15 (Pause in the proceedings.)

16 MS. CROCKER: Thank you, Your Honor.

17 THE COURT: No. Thank you for bringing that back  
18 up because I just totally forgot. Long day.

19 MR. WOLFSHOHL: Your Honor, there's just a little  
20 typo on effective there.

21 THE COURT: I'm sure there's more than one.

22 MR. WOLFSHOHL: You know what? You could be my  
23 typist anytime. You're doing great.

24 THE COURT: Thank you. All right. Can you -- I  
25 know that it's -- and I want people to have a --

1 MR. WOLFSHOHL: Your Honor, I'm standing by. As  
2 soon as I see it hit the Docket, I can do the Notice of  
3 Appointment myself.

4 THE COURT: Terrific. Thank you.

5 Then with that, let's save it. And I thank -- I  
6 thank everyone for their patience, for helping me work  
7 through this.

8 Again, I fully anticipate this will not solve 100  
9 percent of the problems. That doesn't mean you're not free  
10 to file a motion tomorrow if you believe that there's  
11 something that needs to be addressed, but I've got to start  
12 the process. And I think we've all done the best we could.  
13 The order has been signed. It's on its way to docketing.

14 Mr. Gibbs, did you have something?

15 And thank you to the U.S. Trustee.

16 Mr. Gibbs?

17 MR. GIBBS: Good evening, Your Honor. Chuck  
18 Gibbs with McDermott, Will & Emery, Counsel for the Official  
19 Unsecured Creditors Committee.

20 It's my understanding that, with the entry of  
21 this order, I no longer have a client. So I would just ask  
22 the Court's indulgence to allow me to file appropriate  
23 papers to be relieved of our ongoing duties.

24 THE COURT: Absolutely. I will -- if it -- if it  
25 is helpful to you, give you the same courtesy that I

1 extended to all of the Debtors' professionals.

2 MR. GIBBS: Uh-huh.

3 THE COURT: You know, you're not -- you know,  
4 you're going to take a loss on the case. I get it. Don't  
5 spend time filing a fancy motion. Upload a proposed  
6 order --

7 MR. GIBBS: Thank you, Judge.

8 THE COURT: -- and I'll take care of it.

9 MR. GIBBS: All right.

10 THE COURT: All right. Thank you.

11 Folks, anything else that we need to talk about  
12 today?

13 (No audible response.)

14 THE COURT: All right. And, again, thank you for  
15 everything. You are all excused.

16 MR. RAY: Your Honor?

17 THE COURT: Yes.

18 MR. RAY: Sorry, Your Honor. Hugh Ray, III on  
19 behalf of Chevron Products Company.

20 The order you uploaded referenced an Exhibit 1  
21 that has been sent to Mr. Alonzo, consisting of the names of  
22 the fuel suppliers.

23 THE COURT: Right.

24 MR. RAY: I don't know if that was attached to  
25 the order or not.

1 THE COURT: No, it's not. We -- it hadn't gone  
2 -- it hasn't yet been docketed. We're going to attach it on  
3 before it gets docketed.

4 MR. RAY: Thank you, Your Honor. That's all I  
5 had.

6 THE COURT: All right. Thank you.

7 MR. RAY: Yes, Your Honor.

8 THE COURT: Thank you, everyone.

9 (Hearing adjourned at 5:47 a.m.)

10 \* \* \* \* \*

11 I certify that the foregoing is a correct  
12 transcript to the best of my ability from the electronic  
13 sound recording of the ZOOM/video/telephonic proceedings in  
14 the above-entitled matter.

15 /S/ MARY D. HENRY

16 CERTIFIED BY THE AMERICAN ASSOCIATION OF  
17 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337  
18 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
19 JTT TRANSCRIPT #67574

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